

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF DELAWARE**

<b>MICHAEL CHAMBERS,</b>	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 06-771-JJF
	:	
<b>RAPHAEL WILLIAMS,</b>	:	
Warden, and <b>JOSEPH R. BIDEN, III,</b>	:	
Attorney General for the State of Delaware,	:	
	:	
Respondents.	:	

**SUPPLEMENTAL ANSWER**

This Court's order of January 3, 2008, directs respondents to (1) supplement the state court record with the most recent Delaware Superior Court Criminal Docket involving the petitioner's case; (2) supplement the state court record with any state court decisions issued after May 17, 2007 that may be relevant to the instant proceedings; and (3) inform the Court the effect, if any, such state court proceedings have on Chambers' petition. D.I. 15. In response, respondents submit the following:

In September 2006, the petitioner, Michael Chambers, acting *pro se* with standby counsel, was convicted by a Delaware Superior Court jury of possession with intent to deliver cocaine, use of a dwelling for keeping controlled substances, possession of a firearm during the commission of a felony, and possession of a non-narcotic controlled substance. *See State v. Chambers*, 2007 WL 92625, \*1 (Del. Super. Ct. Jan. 11, 2007). In November 2006, Chambers moved for a new trial or acquittal of the judgment. *See Del. Super. Ct. Crim. Dkt. at Item 37* (hereinafter "Crim. Dkt. at \_\_\_"). After receiving a response from state prosecutors, the trial judge denied Chambers' motion. *See Chambers*, 2007 WL 92625 at \*1. In January 2007,

Chambers was sentenced as an habitual offender pursuant to DEL. CODE ANN. TIT. 11, § 4214(a) to twenty-five years of incarceration, followed by three years at decreasing levels of supervision. *See* Crim. Dkt. at Items 48-49. On June 16, 2007, Chambers moved for postconviction relief in Superior Court under Criminal Rule 61. Crim. Dkt. at Item 52. On June 27, 2007, Chambers filed a notice of appeal in the Delaware Supreme Court. Del. Supr. Ct. Dkt. Item 1, *Chambers v. State*, No. 312, 2007. While his appeal of his conviction was pending, Superior Court summarily denied Chambers' motion for postconviction relief on July 9, 2007. Crim. Dkt. at Item 56. In September 2007, the state supreme court accepted Chambers' appeal from his conviction and sentence (Del. Supr. Ct. Dkt. Item 6, *Chambers v. State*, No. 312, 2007), and that appeal "may be considered to be under submission for decision [by the Delaware Supreme Court] as of Friday, January 25, 2008." Del. Supr. Ct. Dkt. Item 13, *Chambers v. State*, No. 312, 2007.

Chambers filed a § 2254 petition for federal habeas relief in December 2006 (D.I. 1), and respondents filed an answer to the petition on May 31, 2007 (D.I. 10). Although in their answer respondents stated that Chambers did not appeal his conviction and sentence, it is now apparent that the Delaware Supreme Court had accepted Chambers' appeal in September 2007. The briefing in that appeal (No. 3412, 2007) has been completed, but the court has not yet issued a decision. Thus, it would appear that Chambers' federal habeas petition was prematurely filed, his conviction not yet being final. *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991). Consequently, Chambers' claims are unexhausted and must be dismissed. *Id.* Moreover, the AEDPA limitations period for filing a § 2254 habeas petition does not begin to run until after a petitioner has completed his direct appeal. 28 U.S.C. § 2244(d)(1) ("The limitation period shall run from the latest of . . . the date the judgment became final by the conclusion of direct review .

. . ."). As a result, Chambers need not have the proceedings stayed to avoid preclusion by the statute of limitations. *Cf. Rhines v. Weber*, 544 U.S. 269 (2005).

In light of the unique procedural posture of this case, respondents respectfully request the Court to dismiss without prejudice Chambers' petition to allow him to exhaust his claims in the state courts.

/s/ Elizabeth R. McFarlan  
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Date: January 10, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2008, I electronically filed a supplemental answer to a habeas petition with the Clerk of Court using CM/ECF. I also hereby certify that on January 10, 2008, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Michael Chambers  
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